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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,634	03/29/2004	Maged M. Michael	YOR920040083US1 (17486)	2362

23389   7590   01/12/2007
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EXAMINER
VERBRUGGE, KEVIN

ART UNIT	PAPER NUMBER
2189	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/811,634	MICHAEL, MAGED M.
	Examiner	Art Unit	
	Kevin Verbrugge	2189	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>29 March 2004</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-52</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-52</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>29 March 2004</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "large" in claims 1, 18, 26, 43, 51, and 52 is a relative term which renders the claims indefinite. The term "large" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 51 and 52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

First of all, the presumption that 112 6th paragraph has been invoked by the means plus function language of the claims is rebutted by the evidence of the

specification, especially paragraphs 76-78. Those paragraphs indicate that the means

plus function elements of the claims are intended to cover software alone and not any

physical structure. Therefore, 112 6th paragraph does not apply to claims 51 and 52.

Furthermore, claims 51 and 52 are directed to software per se (functional

descriptive material) and therefore do not fall within any of the four statutory categories

of invention mentioned above. The use of the word "system" in the preamble does not

change the fact that the claims are directed entirely to software since the broadest

reasonable interpretation of the word "system" includes a group of software elements.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent 6,539,464 to Getov.

Regarding claims 1, 26, and 51, Getov shows the claimed method in Fig. 5. The

step of determining the size of a requested memory block is shown in the figure's upper

diamond which includes the text "size > maxSize". The step of allocating the memory

block directly from an operating system if it is determined that the memory block is a

predetermined large size is shown on the left side of the figure following the "yes" path

out of the upper diamond, indicating that the size of the requested memory block is a

large size (greater than maxSize). Finally, Getov shows the claimed last step of

returning the memory block at the bottom of the figure.

The other steps of the claims are not required since the claim language includes

the conditional "if" statements. In other words, Getov fully anticipates the claim when a

requested memory block is a predetermined large size (greater than maxSize). The

second, third, and fourth allocating steps only apply to the case when the requested

memory block is a predetermined regular size, so in the case of a requested memory

block of a large size, the first allocating step is performed and the claim is anticipated.

Getov's device need not perform the second, third, and fourth allocating steps.

Regarding claim 2 (and 27), the claim's conditional "if" statement only requires

the step of allocating a memory block from the active super-block if a memory block fails

to be allocated. Since Getov's device allocates a memory block, the if statement is

false and nothing more is required.

Regarding claims 3-17 (and 28-42), these claims do not require any further

limitations since they depend from claim 2 (and 27), whose if statement is false as

discussed above.

Regarding claims 18, 43, and 52, Getov shows the claimed method in Fig. 6.

The step of determining the size of a memory block is shown in the figure's upper

diamond which includes the text "block.size > maxSize". The step of returning the memory block to the operating system if it is determined that the block is a large block is shown on the left side of the figure following the "yes" path out of the upper diamond, indicating that the size of the memory block is large (greater than maxSize).

The other steps of the claims are not required since they apply to the situation when the memory block is not a large block, as clearly shown in Applicant's Fig. 2.

In other words, Getov fully anticipates the claim when a memory block is a large block (greater than maxSize). The remaining steps only apply to the case when the memory block is a regular size, so in the case of a memory block of a large size, the first step is performed and the claim is anticipated. Getov's device need not perform the remaining steps.

Regarding claim 19 (and 44), the claim's conditional "if" statement applies to a step in claim 18 (and 43) that is only required when the memory block is a regular size as discussed above. Since the situation with a large memory block completely anticipates claim 18 (and 43) and the step of determining if the super-block is full is not performed and not required to be performed, then claim 19 (and 44) is anticipated because it refers to a step which is not performed.

Regarding claims 20-25 (and 45-50), these claims do not require any further limitations since they depend from claim 19 (and 44) which is anticipated as mentioned above.
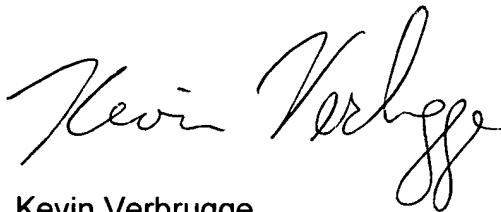
Conclusion

Any inquiry concerning this Office action should be directed to the Examiner by phone at (571) 272-4214.

Any response to this Office action should be labeled appropriately (including serial number, Art Unit 2189, and type of response) and mailed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, hand-carried or delivered to the Customer Service Window at the Randolph Building, 401 Dulany Street, Alexandria, VA 22313, or faxed to (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

Kevin Verbrugge
Primary Examiner
Art Unit 2189